IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5657 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MUSTUFAKHAN IZUBULLAKHAN PATHAN - Petitioner(s)

Versus

STATE OF GUJARAT - THRO' DIRECTOR OF MUNICIPALITIES & 1 - Respondent(s)

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Appearance :

MR BS PATEL for Petitioner(s) : 1,MRS RANJAN B PATEL for Petitioner(s) : 1,
MR SIRAJ GORI AGP for Respondent(s) : 1,
MR AJAY R MEHTA for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 21/11/2005

ORAL JUDGMENT

1. In the present petition, the petitioner has challenged the legality of an order dated 19/4/2003 by which the petitioner was removed from the position

of Councillor of Petlad Municipality. Main allegation against the petitioner was that he had misbehaved with a lady Chief Officer of the Municipality and had used the word “Idiot”. On the basis of these allegations after issuance of show cause notice the competent authority namely Director of Municipalities was pleased to pass impugned order removing the petitioner from the position of Councillor of Petlad Municipality.

2. On 9/5/2003 this Court while admitting the petition also granted interim relief staying the impugned order on the condition that the petitioner should file an affidavit in terms of an order dated 30th April, 2003. It may be noted at this stage that on 30th April, 2003, learned advocate for the petitioner had stated that his client will tender an apology without prejudice of his rights and contentions and that such incident will not be repeated.

3. Learned advocate Shri Patel appearing for the petitioner submits that the petitioner filed two

affidavits and indicated his regret for the incident of course without prejudice to his rights and contentions raised in the petition.

4. In view of the interim order passed by this Court, the petitioner was protected against his removal and continued to discharge his duties as a Councillor. Learned advocate Shri Patel points out that the term of the Municipality is over and fresh elections have also been held in which the petitioner did not contest. In so far as the removal of the petitioner is concerned, the question has become one of academic interest. Learned advocate Shri Patel however points out that by virtue of provisions contained in Section 11(1)(a)(ii) of the Gujarat Municipalities Act, 1963 the order removing the petitioner would result into his disqualification for a period of four years unless the State Government relieves the petitioner from such disqualification. Therefore the only question that survives for consideration is whether the petitioner should be made to suffer disqualification for a period of four years from the date of passing of the order by the

Director of the Municipalities.

5. As noted earlier the only ground held proved for the removal of the petitioner as Councillor is that he had used improper language and misbehaved with the Chief Officer of the Municipality. Undoubtedly such behaviour cannot be approved. The petitioner has however, expressed his regrets. He was allowed to continue as a Councillor for the remaining term of the municipality under the order of the Court. In the fresh election he has not participated. It would, therefore, be unjust and inequitable to allow the removal order to operate in such a manner as to disqualify the petitioner from contesting future elections as Councillor. Section 11(1)(a)(ii) empowers the State Government also to remove such disqualification in a given case. The present case is a fit one where such disqualification should be waived. Ordinarily this Court would have placed the issue before the State Government for its consideration and exercise of discretionary powers u/s 11(1)(a)(ii) of the Gujarat Municipalities Act. However in the present case parties requested the

Court to decide the issue instead of remanding the proceedings before the State Government. In peculiar facts of the present case, therefore, it is provided that the order of removal passed against the petitioner by the Director of Municipality on 19th April, 2003 shall not act as a disqualification for his future participation in the election as a Councillor. Petition is disposed of accordingly. Rule is made absolute to the above extent. No order as to costs.

(Akil Kureshi, J.)

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